

October 20, 2018

To whom it may concern:

I am writing to you to demand that the Pacific Palisades Business Improvement District, Incorporated cease and desist from violating the Brown Act as described below and to request that, in order to avoid costly and unnecessary litigation, you respond per the Brown Act [at California Government Code §54960.2](#) with an unconditional commitment to so cease and desist.¹

1 Background

1. Business improvement districts (“BIDs”) are assessment districts which are authorized and regulated by the Property and Business Improvement District Act of 1994 (“the PBID law”). The PBID law [at Streets and Highways Code §36612](#) requires a city to contract with a non-profit corporation to administer each BID. Such a non-profit corporation is called an “owners’ association.”²
2. Having entered into [Contract C-126902](#) with the City of Los Angeles in December 2015 to administer the Pacific Palisades BID the Pacific Palisades Business Improvement District Inc. (“PPBID”) is the owners’ association for that BID.
3. Owners’ associations in California are made subject to the Brown Act by the PBID law [at §36612](#), which states:

...an owners’ association shall comply with the Ralph M. Brown Act ... at all times when matters within the subject matter of the district are heard, discussed, or deliberated

4. Owners’ associations are defined in the Brown Act at [§54952\(c\)\(1\)\(A\)](#) to be “legislative bodies.” The definition there states in pertinent part:

As used in this chapter, “legislative body” [includes] ... A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that ... Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

¹ Please note that all citations to the Brown Act in this document are to the California Government Code.

² Please note that all citations to the PBID law in this document are to the California Streets and Highways Code.

2 The facts

5. The PPBID Board of Directors has ten members. They are:

- (a) Elliot Zorensky
- (b) Shaun Malek
- (c) Leland Ford
- (d) Staci Mitchell
- (e) Rick Lemmo
- (f) Susan Carroll
- (g) Nicole Howard
- (h) Lynn Boreland
- (i) David Peterson
- (j) Manuel Pardo

See [Exhibit 7.1](#) on page 6, which is a screenshot of the Palisades BID web site Board member directory, found at <http://www.palisadesbid.org/about-us.html>. The screenshot was taken on October 6, 2018.

6. On May 23, 2018 PPBID Board member Rick Lemmo emailed fellow board members Elliot Zorensky and Nicole Howard³ about an article that had appeared in the Palisades News. He said:

Good morning.

Please find attached another “fake news” account by the somewhat defunct Palisades News. I would appreciate it if the BID would in fact correct the record in our upcoming minutes and two *[sic]* write a correction to Bill Burns *[sic]* and the news to moire *[sic]* accurately relate the facts and correct their story.

I simply stated that the Chamber, particularly now that the BID is involved with cleaning in the district, is focusing on the business of the Chamber and not fund raising for services not directly related to the business of our members.

Thanks

See [Exhibit 7.2](#) on page 8.

7. Later that day Susan Payne, who is not on the Board, replied to Board members Zorensky, Lemmo, and Howard continuing the conversation and, in particular, reporting on a discussion she’d had on the topic with Zorensky. Again see [Exhibit 7.2](#) on page 8.

³ Along with some other people not on the Board.

8. That evening Elliot Zorensky replied to Board members Lemmo, Howard, Susan Carroll, and Leland Ford, having added the last two to the distribution list. In this email he stated that the BID would send a rebuttal to the Palisades News and that the BID's minutes would be edited to reflect Lemmo's concerns. At this time he directed BID Executive Director Laurie Sale,⁴ whom he had also added to the distribution list, to write a first draft of the response:

We, the BID will write an *[sic]* rebuttal to the article and send to the paper (Bill Bruns). I would also send to the Palisades Post if they will print it too. The BID would love help with this letter from the Chamber to make sure it is correct and comprehensive. The BID minuets *[sic]* will reflect the facts correctly. It will NEVER make the Chamber look abd and hope the relationship can go back to what it was.

I am still in Vegas spending time with my sons following the ICSC convention and will be back to the Palisades on Saturday evening. I will ask for the correction article to be started right away. Laurie and Susan Carrol *[sic]* will take a run at the first draft. Guys again I am so sorry for how the Chamber was made to look bad.

Again see [Exhibit 7.2](#) on page 8.

9. The next day, May 24, 2018, Zorensky forwarded Lemmo's original email to the rest of the Board members. By means of this email he shared Lemmo's opinion on the matter with the rest of the Board and added his own opinion on what should be done:

Everyone we have a problem. We must write a letter to correct the facts to Sue Pascoe.

See [Exhibit 7.3](#) on page 11.

3 The Law

10. The Brown Act at [§54952.2\(b\)\(1\)](#) states:

A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

11. In an official opinion of the California Attorney General, counsel opined that the activity prohibited by this section

⁴ Now retired.

... would include any exchange of facts ... or ... substantive discussions “which advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise amongst members, or advance the ultimate resolution of an issue”.⁵

The opinion is 84 Cal. Op. Att’y Gen. 30 (2001) and is included here as [Exhibit 7.4](#) on page [13](#).

4 Conclusion

12. Board members Zorensky, Lemmo, and Howard discussed whether the BID should send a rebuttal letter to the Palisades News among themselves on May 23, 2018. Zorensky shared Lemmo’s and his own conclusions with the rest of the Board on May 24. Therefore on May 23 and 24, 2018 the PPBID Board of Directors “use[d] a series of communications ... to discuss” whether or not the BID should send a rebuttal letter to the Palisades News.
13. This discussion included an “exchange of facts” and “substantive discussions which advance[d] or [clarified]” members’ understandings of the issue. Zorensky’s directives to the Board and staff “advance[d] the ultimate resolution of [the] issue.”
14. The issue being discussed was a question of whether the BID should adopt an official opinion on a matter. It was therefore clearly within the subject matter jurisdiction of the PPBID Board of Directors.
15. Therefore the discussion described in this letter constitutes a violation of the Brown Act at §54952.2(b)(1).

5 The harm done

16. This violation is not just incidental, technical, nor harmless. Rather, it implicates fundamental constitutional rights that the people of California have reserved to themselves. The Brown Act [at §54950](#) states:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

⁵ Internal citations omitted.

17. By discussing the people's business in secret via email the Board of the PPBID has deprived the public of the opportunity to be present when public business is discussed, to observe the actions of its decision makers, and to attempt to influence those actions via public comment or other forms of political action.

6 Demand for relief

18. The PPBID's failure to comply with the requirements of the Brown Act constitutes a grave betrayal of both fundamental and consequential principles of our government. It is therefore in the best interest of all concerned that the BID not only cease and desist from such violations in the future but that they make a public commitment to ceasing and desisting.
19. If the PPBID responds to this demand within 30 days of today's date with a letter expressing an unconditional commitment to cease and desist from all future violations of this type in substantially the form given by the Brown Act [at §54960.2\(c\)](#) I will consider this matter at an end. Please send this letter to me by email at [■■■■■■@■■■■■■.org](#) and by postal mail at:

□ □ □ □ □ □ □ □ □ □ □ □

[illegible]

Los Angeles, CA ■■■■■

For the sake of efficiency please either confirm my receipt of this letter or send it in such a way that its arrival is trackable.

20. If the PPBID refuses to so respond or so responds after 30 days have passed I will instruct my attorneys to proceed to “file an action to determine the applicability of this chapter to [the above-described] past actions of the” PPBID under §54960.2 of the Brown Act. If I prevail in that action the Brown Act [at §54960.5](#) allows for the court to award costs and reasonable attorneys’ fees to me.

Thank you for your prompt attention to this important matter,

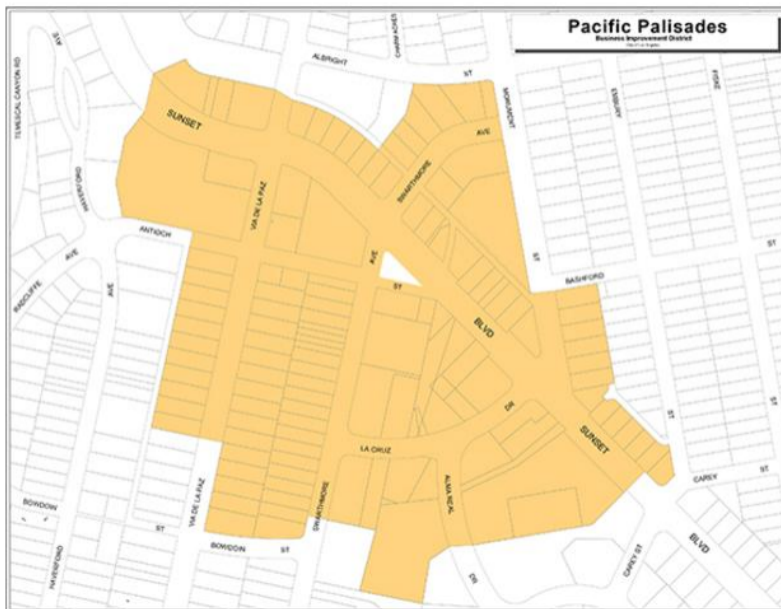
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7 Exhibits

7.1 PPBID Board of Directors


[Home](#)
[About Us](#)
[What's New?](#)
[Newsletters](#)
[Meeting Agendas](#)
[Contact Us](#)

Map of Pacific Palisades Business Improvement District



Our mandate is to provide services to the district within these boundaries.

The official boundaries for the BID are: Beginning on the northwest corner of Monument Street and Swarthmore Avenue go south on Monument Street to Bashford Street. At Bashford Street, turn east along northern parcel line of 4423-017-024. Turn south along the eastern parcel line of 4423-017-024 and parcels facing west on Monument Street and Sunset Boulevard. Go west on the southern parcel line of 4423-017-026 across Sunset Boulevard to 4411-001-019. Go west along the southern parcel line of 4411-001-019 across Alma Real Drive to 4412-009-014. Head south along eastern parcel line of 4412-009-014, then go west along the southern parcel line of 4412-009-014. Turn north along the western parcel line of 4412-009-014. Go west along the southern parcel lines of parcels facing south on La Cruz Drive. Go across Swarthmore Avenue and west along Bowdoin Street to Via de la Paz. Turn north along the western parcel line of parcels facing west on Via de la Paz then head west along the southern parcel line of 4412-004-025. Turn north along the west parcel line of 4412-004-025 and continue north to Antioch Street. At Antioch Street go west along the southern parcel line of 4412-001-017, then north along the western parcel line of 4412-001-017. Cross Sunset Boulevard to the western parcel line of 4422-022-015. Turn east along the northern parcel line of 4422-022-015 and continue east northern parcel line of parcels facing south on Sunset Boulevard to Swarthmore Avenue. Turn north along the northern parcel lines of parcels facing southeast along Swarthmore Avenue to the northwest corner of Monument Street and Swarthmore Avenue.

Board of Directors

President
Elliot Zorensky
UDO Real Estate

Vice President
Shaun Malek, DDS
Triwell Properties

Treasurer
Leland Ford
Leland M. Ford & Assoc.

Recording Secretary
Staci Mitchell
Palisades BID - Bookkeeper

Rick Lemmo
Caruso Affiliated

Susan Carroll,
Gift Garden Antiques
Representing Dale Van Vlack

Nicole Howard
Representing Pacific Palisades
Chamber of Commerce

Lynn Boreland
Representing Methodist Church
Properties

David Peterson
Representing P.R.I.D.E.

Manuel Pardo
Representing Village School

Community Links



[Pacific Palisades Community Council](#)



[Pacific Palisades Chamber of Commerce](#)



7.2 May 23, 2018 – Lemmo/Zorensky/Howard emails

[REDACTED]

From: Elliot Zorensky <[REDACTED]>
Sent: Wednesday, May 23, 2018 10:37 PM
To: Susan Payne; Rick Lemmo; nicole [REDACTED]; Richard Blumenberg
Cc: Palisades BID; Susan Carroll; Leland Ford
Subject: RE: Palisades News 5.23.18.pdf

Guys, I really cannot believe that Sue Pascoe did an article that makes the Chamber look bad for the all of the good deeds you have done for years. I do not understand why she would do that?

Regardless, Chamber people, the BID does not believe the Chamber did anything wrong in getting out of the cleaning business. Susan and everyone has been nothing but accommodating, considerate, reasonable and easy to work with during the transition. I know we had a discussion where one individual was not informed, made some statements he did not understand, and then have those statements quoted as if that was the beliefs of the complete BID. It was not, it was one person and that one person was from newer member of the BID. Others and I personally explained to David what he did not know, why what he was saying made no sense and what the Chamber did was appropriate. Please verify this with the other chamber members on the BID. They will tell you such. During the meeting Rick leaned over to me and told me to be careful about Sue. I did not take that warning as serious as I should, and for this I am sorry.

We, the BID will write a rebuttal to the article and send to the paper (Bill Bruns). I would also send to the Palisades Post if they will print it too. The BID would love help with this letter from the Chamber to make sure it is correct and comprehensive. The BID minutes will reflect the facts correctly. It will NEVER make the Chamber look bad and hope the relationship can go back to what it was.

I am still in Vegas spending time with my sons following the ICSC convention and will be back to the Palisades on Saturday evening. I will ask for the correction article to be started right away. Laurie and Susan Carroll will take a run at the first draft. Guys again I am so sorry for how the Chamber was made to look bad.

From: Susan Payne [mailto:[REDACTED]]
Sent: Wednesday, May 23, 2018 6:21 PM
To: Rick Lemmo <[REDACTED]> Elliot Zorensky <[REDACTED]>
nicole [REDACTED] Richard Blumenberg <[REDACTED]>
Subject: RE: Palisades News 5.23.18.pdf

Hi Everyone:

I do not understand how the Chamber is made to look like we are the bad guys in this situation. All the Board did was decide to transfer the fundraising responsibility to the BID as well as the current BID funds, so that it can be administered by one entity...The BID. The BID, and not the Chamber, is tasked with cleaning sidewalks, trash pick-up, among other things. When the Chamber started this project, there was no BID. It made perfect sense to the Board to consolidate the funds in one place to better allocate the funds, with no duplication. I really do not see what the controversy is here. There is no mailing list. It is a form letter, produced and mailed by a mailing/printing company to every household in the Palisades once a year. The BID will be responsible for this mailing in the future. The recipients of this letter are very well aware that the Chamber does not profit from these funds. They will also be well aware that the BID doesn't profit from these funds.

Elliot asked me if the Chamber could do one more mailing and BID would then take over the process. We will. Elliot expressed the fear that if the letter comes from the BID it will be less effective. This letter doesn't go to businesses, just

residents, so I do not think it will matter. The Chamber will do whatever necessary to facilitate this change over. We understand these funds are needed .

The Chamber is refocusing our energies in an effort to expand and improve the value we provide our members.

Sincerely,
Susan Payne

CalBRE# 01203767

From: Rick Lemmo [REDACTED]
Sent: Wednesday, May 23, 2018 1:36 PM
To: Elliot Zorensky; Susan Payne; nicole [REDACTED]; Richard Blumenberg
Subject: Palisades News 5.23.18.pdf

Good morning.

Please find attached another "fake news" account by the somewhat defunct Palisades News. I would appreciate it if the BID would in fact correct the record in our upcoming minutes and two write a correction to Bill Burns and the news to more accurately relate the facts and correct their story.

I simply stated that the Chamber, particularly now that the BID is involved with cleaning in the district, is focusing on the business of the Chamber and not fund raising for services not directly related to the business of our members.

Thanks

7.3 May 24, 2018 – Zorensky email to PPBID Board of Directors

[REDACTED]

From: Elliot Zorensky [REDACTED]
Sent: Thursday, May 24, 2018 7:51 AM
To: Palisades BID; Susan Carroll; Leland Ford; Lynn Borland; David Peterson
[REDACTED]; Manuel Pardo [REDACTED];
Staci Mitchel; Shaun Malek
Subject: FW: Palisades News 5.23.18.pdf
Attachments: Palisades News 5.23.18.pdf; ATT00001.htm

Everyone we have a problem. We must write a letter to correct the facts to Sue Pascoe.

From: Rick Lemmo [REDACTED]
Sent: Wednesday, May 23, 2018 1:36 PM
To: Elliot Zorensky [REDACTED]; Susan Payn [REDACTED];
nicolehowardh [REDACTED]; Richard Blumenberg [REDACTED]
Subject: Palisades News 5.23.18.pdf

Good morning.

Please find attached another "fake news" account by the somewhat defunct Palisades News. I would appreciate it if the BID would in fact correct the record in our upcoming minutes and two write a correction to Bill Burns and the news to more accurately relate the facts and correct their story.

I simply stated that the Chamber, particularly now that the BID is involved with cleaning in the district, is focusing on the business of the Chamber and not fund raising for services not directly related to the business of our members.

Thanks

7.4 84 Cal. Op. Att’y Gen. 30 (2001)

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 00-906
	:	
of	:	February 20, 2001
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
CLAYTON P. ROCHE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE WESLEY CHESBRO, MEMBER OF THE STATE SENATE,
has requested an opinion on the following question:

May a majority of the board members of a local public agency e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board?

CONCLUSION

A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board.

ANALYSIS

The Ralph M. Brown Act (Gov. Code, §§ 54950-54962; "Brown Act")¹ generally requires the legislative body of a local public agency to hold its meetings open to the public. (§§ 54951, 54952, 54953, 54962.) Agendas of the meetings must be posted (§§ 54954.1, 54954.2), and members of the public must be given an opportunity to address the legislative body on any agenda item of interest to the public (§ 54954.3).

The purposes of the Brown Act are thus to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. Not only are the actions taken by the legislative body to be monitored by the public but also the deliberations leading to the actions taken. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373, 375; *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 795-797; *Stockton Newspaper, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 100; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 45.) "The term 'deliberation' has been broadly construed to connote 'not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.' [Citation.]" (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale, supra*, 5 Cal.4th at p. 376.)

The question presented for resolution concerns e-mail messages between members of the board of a local public agency. May a majority of the members e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Brown Act if the e-mails are sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the agency? We conclude that such conditions would not be sufficient to prevent a violation of the Brown Act.

The statute governing our discussion is section 54952.2, subdivision (b), which

¹ All references hereafter to the Government Code are by section number only.

provides:

“Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.”

Section 54953 concerns the use of teleconferencing procedures and has no application to the situation presented herein.

In analyzing the language of section 54952.2, we may apply well recognized principles of statutory construction. We are to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*DuBois v. Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387.) “The words of the statute are the starting point.” (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) “Words used in a statute . . . should be given the meaning they bear in ordinary use. [Citations.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

Applying these rules of construction to the terms of subdivision (b) of section 54952.2, we find that the sending of e-mails would be the “use of . . . technological devices.” The statutory prohibition applies to such use “by a majority of the members of the legislative body.” Anything less than a majority is not covered by the statute. (See *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at pp. 375-377; *Frazer v. Dixon Unified School Dist.*, *supra*, 18 Cal.App.4th at p. 797.) Here, we are given that a majority of the board members are sending e-mails to each other.

As for the requirement that the e-mails be employed “to develop a collective concurrence as to action to be taken on an item,” we note that such activity would include any exchange of facts (see *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at pp. 375-376; *Frazer v. Dixon Unified School Dist.*, *supra*, 18 Cal.App.4th at p. 796) or, as we have previously explained in our pamphlet on the Brown Act, substantive discussions “which advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise amongst members, or advance the ultimate resolution of an issue” (Cal. Dept. of Justice, *The Brown Act, Open Meetings For Local Legislative Bodies* (1994), p. 12) regarding an agenda item.

We find no distinction between e-mails and other forms of communication such as leaving telephone messages or sending letters or memorandums. If e-mails are employed to develop a collective concurrence by a majority of board members on an agenda item, they are subject to the prohibition of section 54952.2, subdivision (b). Application of the statute

in such circumstances furthers the “broad policy of the act to ensure that local governing bodies deliberate in public.” (*Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 373; see *Frazer v. Dixon Unified School Dist.*, *supra*, 18 Cal.App.4th at pp. 794-795; *Stockton Newspapers, Inc. v. Redevelopment Agency*, *supra*, 171 Cal.App.3d at p. 100; *Sacramento Newspaper Guild v. Sacramento County Board of Suprs.*, *supra*, 263 Cal.App.3d at p. 45).

We recognize that the three conditions of (1) concurrently sending copies of the e-mails to the secretary and chairperson of the agency, (2) concurrently posting the e-mails on the agency’s Internet website, and (3) reporting the contents of the e-mails at the agency’s next public meeting would allow the deliberations to be conducted “in public” to some extent. Nevertheless, the deliberations would not be conducted as contemplated by the Brown Act. Members of the public who do not have Internet access would be unable to monitor the deliberations as they occur. All debate concerning an agenda item could well be over before members of the public could be given an opportunity to participate in the decision-making process. (See *Frazer v. Dixon Unified School Dist.*, *supra*, 18 Cal.App.4th at p. 794; Cal. Dept. of Justice, *The Brown Act, Open Meetings For Local Legislative Bodies*, *supra*, p. 12.) Subdivision (b) of section 54952.2 is straightforward and unambiguous. The proposed conditions satisfy neither the specific language nor all the critical purposes of the statute.

We thus conclude that a majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Brown Act even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency’s Internet website, and a printed version of each e-mail is reported at the next public meeting of the board.
